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In The

Supreme Court of the United States

October Term, 1995

FREDERICK G. JENSEN,

Petitioner,

v.

UNITED STATES, ATTORNEY GENERAL, JANET RENO,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

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QUESTIONS:

WHERE A TAX DELINQUENT UNSUCCESSFULLY ALLEGED AN UNCONSTITUTIONAL EXPENDITURE OF FUNDS, DOES THE REFUSAL OF THE SUPREME COURT OF THE UNITED STATES TO GRANT AN ACCOUNTING OF TAXES LEVIED AND COLLECTED IN 1986 REQUIRE THE COURT IN 1996 TO FIND ALL ACCOUNTING BARRED AS THE LAW OF THE CASE, OR A MATTER RES JUDICATA, OR JUDICIALLY BEYOND THE JURISDICTION OF ANOTHER COURT WHEN A 1992 LEVY WAS COLLECTED POTENTIALLY CONTRARY TO STATUTE?

DO THE DOCTRINES OF STARE DECISIS, OR RES JUDICATA, OR THE LAW OF THE CASE, OR JUDICIAL TRANSFERABILITY AND CO-JURISDICTION OR ANY OR ALL OF THEM OPERATE TO SETTLE QUESTIONS OF JURISDICTION, AS BETWEEN THE UNITED STATES TAX COURT AND DISTRICT COURTS?

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RULES:

Rule 22.6, S. Ct. U.S. 1

AUTHORITIES:

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner, Frederick G. Jensen, appearing pro se, offers this supplemental brief to the Supreme Court of the United States in accordance with Rule 22.6 of the Court for the purpose of bringing to the Court's attention two new cases.

LAW OF THE CASE AND COORDINATE JURISDICTION

The first case petitioner cites is *Commonwealth (Pa.) v. Starr*, 664 A. 2d 1326 (Aug. 29, 1995). This case is reported in West's softbound volume received November 13th at Washington State Law Library. The Pennsylvania court therein resolved jurisdictional problems that arose, generally upholding the right of a defendant to appear pro se to argue innocence on a charge of murder where the State sought to impose counsel. The court said, ". . . . our extension today of the law of the case doctrine to include the coordinate jurisdiction rule amounts to nothing more than a distinction without a difference." And, ". . . . an appellate court will not as a general rule reconsider questions which another panel of that court has decided in a prior appeal in the same case."

A QUESTION OF FORUM

So it has happened in this case that a question of which forum arose when the Ninth Circuit Court of Appeals upheld the dismissal of a tax question for lack of jurisdiction by both District Court, Tacoma, and Tax

Court, for that is the effect of the refusal of the Appellate Court Panel in No. 95-70045, *Jensen v. C.I.R.*, to grant a hearing and rehearing en banc.

ACCOUNTING IS VITAL IN A TAX CASE

Appellate Court never granted an accounting where the money collected by seizure and auction in 1986 amounted to more than $7,000 on a delinquency under $12,000, and a subsequent collection in 1992 of over $24,000 on the same delinquency. Of course, in denying jurisdiction, the claim of improper collection in 1992 was never addressed either. However, neither did the Supreme Court grant an accounting in 1986 on some of the same facts. It is not likely that either panel of the Appellate Court denied an accounting on the ground that the decision of the Supreme Court in 1986 was res judicata, the law of the case, or stare decisis.

THE CHARACTER OF PROCEEDING ARGUED PRO SE

While *Starr* discusses these questions, it also notes (p. 1336), "(our) collective view of justice includes the notion that although a defendant 'may conduct his own defense ultimately to his own detriment, his choice (of self-representation) must be honored out of – that respect for the individual which is the lifeblood of the law –'." (Citations omitted) Plaintiff proceeding in this case was chided for his persistence (read incompetence?) because it results in a waste of taxpayer's money.

THE EFFECT OF CASE LAW ON JURISDICTIONAL QUESTIONS

The issue is neither the life of a human being or the money of the peoples' government, but the life of the law itself, in that, none of these doctrines promoting the orderly settlement of causes reaches down to negate the jurisdiction of every court in particular cases. That remains intact. See 21 C.J.S. §149, p. 188.

THE IMPORTANCE OF IDENTIFYING THE ISSUE

The insistence of the government that the nexus of this case is found in the tax question will ever bar settlement, since the central question is, in fact, the abortion/life question. Once that is settled, the tax question can be attacked, especially as to fines and penalties that might be imposed.

THE LAW OF THIS CASE

The discussion of these principles, including stare decisis, is pertinent, since *Roe/Doe* was held stare decisis and an abortion challenge is said to be "frivolous" in this case in 1986 and in District Court, Tacoma, more recently. So we have, "What to do? Where to go?

THE EFFECT OF HOLDING A DECLARATORY JUDGMENT STARE DECISIS

The doctrine of stare decisis as annunciated by the Supreme Court in following *Roe/Doe* is a patent attempt to use mere words to resolve the abortion/life question. That doctrine does not apply in this case, since petitioner does not allege the unborn is a person entitled to fight for rights in court. Petitioner argues only that the unborn, as such, is human life, that no person – least of all the mother and her doctor – has a right to destroy that life on the ground that it is in some way illegitimate, or unwanted, or handicapped so as to involve heavy post-natal medical expenses and special care. In law the unborn is innocent, harmless and defenseless. Because of this the destruction of unborn human life is now, and always was, a heinous misdemeanor at common law.

THE APPLICATION OF THE RULE OF STARE DECISIS

There are three conditions that make possible the development of case law to the point where the doctrine of stare decisis is law. 1) The settled question must be one that arises between King and subjects. In our day that means a constitutional question concerning the rights of the people versus the government. 2) There must be a court system competent to review, modify, or vacate a court decision. And, 3) There must exist a consistent system of case reporting.

A FAILURE TO MEET THE CRITERIA

Analyzing *Roe/Doe* and subsequent cases under these criteria there is no doubt the question is one that defines individual rights in the face of the law-making power of government. However, in *Roe* decision was handed down by the Supreme Court to become a non-appealable declaratory judgment regulating inferior courts which not only lost thereby the power to review, but the case was also sui generis, a case of first impression. Not all cases are reported: This one is a taxpayer case in the area of abortion rights and is twice termed frivolous off the record, in 1986 and 1992.

THE EVOLUTION OF CASE LAW PROTECTING THE UNBORN

Further, in twenty years of developing case law defining the right to life of the unborn in criminal and tort law, no concurrent body of case law has appeared defining the status of the unborn vis-a-vis the mother, though wrongful life suits by the unborn have not prospered.

DECLARING A PERPETUITY TO BE STARE DECISIS

The bottom line is not found in these criteria in the final analysis because the Court in *Casey* felt persons who built their lifestyles on the decisions made in *Griswold* and *Eisenstadt* had a right to rely on the decision made in *Roe*.

In that regard please note the N.E. Journal of Medicine, Vol. 333, No. 23, p. 1518 of December 7, 1995 and the article on the "Timing of Sexual Intercourse to Ovulation, Effects on the Probability of Conception, etc." by Allen J. Wilcox, M.D. and others. This study in some proof that there are but four days in any monthly cycle that conception can possibly occur. (Sample size, 625 cycles) Petitioner feels one may now ask the Court as follows: Where a couple can reasonably expect to avoid conception, would any court hold they had a constitutional right to destroy an embryo or fetus on the remote possibility there could be a child?

The answer must be, no, because of the remoteness. It is a case similar to that of the Lord of the Castle who wanted to leave to an unknown grandchild in the ninth degree some or all of his estate. That was a perpetuity in the olden days. Today, it is more accurate to call such future lives potential life.

Consider now the rights of a couple using artificial contraceptives, which do not work in the same theoretical or absolute sense: When they discover they are about to become parents, it is clear they have no right to destroy the child – for the reason that it is not potential life. Its coming birth is a near thing, such as most courts do already recognize in the case of the "viable" preemie.

A RULE OF EVIDENCE

In the case *U.S. v. Hill*, 893 F. Supp. 1044 (N.D. Fla. Sept. 28, 1994) the Court denied Hill, who murdered an abortion doctor, the right to plead justifiable homicide in

his defense because *Roe/Doe* is the law, though he stated, "I point out that defendant, contrary to the government's assertion, is not precluded as a matter of law from attempting to present a necessity defense."

RECONSIDERATION WHERE THE LAW IS STARE DECISIS

When defendant did attempt to bring a necessity defense the court said, "Because the constitutional right to obtain an abortion (on demand?) was recognized by a decision of the Supreme Court of the United States, few legal alternatives exist for those seeking to make abortion completely (?) illegal. Aside from reconsideration by the Supreme Court or an amendment to the Constitution, the constitutionally protected status of the abortion right will continue."

LEGISLATIVE OR JUDICIAL RELIEF

And further, ". . . . this is not a matter which can be changed by congress at any time." Note however, on November 1, the House of Representatives passed H.R. 1833 banning 'partial birth abortions'. A few days later the Senate passed S.B. 939, a similar bill. Partial birth abortion requires that the fetus presenting itself head first must be manipulated to present itself feet first before it is killed and then delivered. At any stage the number of such abortions was reported to be no more than a few thousand a year nationally, in congressional hearings.

DOES *HILL* ESTABLISH A TREND?

Current events make clear we do not know how to govern ourselves on the abortion/life issue. The orders of Vinson, J. in the *Hill* case seem to show that Petitioner, who has attempted to cope legally in many cases might be justified, as a matter of the "lesser evil", to come to court with a shotgun if certiorari (review of *Roe/Doe*) is not granted. However, he honestly believes his legal arguments are worth a lot more than a shotgun in this case.

ABORTION ON DEMAND: FACT OR POPULAR MYTH?

Meanwhile, Hill, pro se, got the attention of the lower court, which refused to take judicial notice than many abortions at any stage are abortions on demand: See hearings on bills, above. The Supreme Court has not done so either and, all the other abortions could possibly be true medical abortions as contemplated in *Roe*. If the court will not take notice of abortions performed on demand, the Court should at a minimum grant Plaintiff Jensen its order upon the C.I.R. for an accounting.

Respectfully submitted,

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